

## J. Y. Interpretation No.367 (November 11, 1994) \*

**ISSUE:** Where the taxpaying body required by the Business Tax Act to declare and pay business tax is altered by the Enforcement Rules of the Business Tax Act and the Ministry of Finance Directives for Levying Business Tax, are such Rules and Guidelines constitutional?

**RELEVANT LAWS:**

Articles 19 and 23 of the Constitution (憲法第十九條、第二十三條) ; Article 2, Subparagraphs 1 and 2, Article 35 of the Business Tax Act (營業稅法第二條第一款、第二款、第三十五條) ; Article 18, Paragraph 1 of the Act Governing the Allocation of Government Revenues and Expenditures (財政收支劃分法第十八條第一項) ; Article 24, paragraph 3 of the Tax Levy Act (稅捐稽徵法第二十四條第三項) ; Article 47 of the Enforcement Rules of the Business Tax Act (營業稅法施行細則第四十七條) ; Article 25-1, Paragraph 3 of the Customs Act (關稅法第二十五條之一第三項) ; Article 16, Paragraph 1, Subparagraph 3 of the Civil Education Act (國民教育法第十六條第一項第三款) ; Clause 2-1 of the Directives for Levying Business Tax on Goods Auctioned or Sold by Courts or Customs or Other Authorities (法院、海關及其他機關拍賣或變賣貨物課徵營業稅作業要點第二項之一) ;

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\* Translated by Raymond T. Chu.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

Regulation Governing the Restriction on the Persons or Representatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit (限制欠稅人及欠稅營利事業負責人出境實施辦法); J. Y. Interpretations Nos. 210, 217, 268, 274, 313, 345, 346 and 360 (司法院釋字第二一〇號、第二一七號、第二六八號、第二七四號、第三一三號、第三四五號、第三四六號、第三六〇號解釋)。

### KEYWORDS:

auction sale (拍賣), sale (變賣), confiscate (沒收), forfeit (沒入), winning bidder (拍定人), consignees (收貨人), holders (持有人), body subject to tax declaration and payment (申報繳納之主體), principle of taxation by law (租稅法律主義), supplementary provision (補充規定), value-added tax (加值稅).\*\*

**HOLDING:** The Business Tax Act provides in Article 2, Subparagraphs 1 and 2, that all business operators who sell goods or services and all consignees or holders of imported goods are business tax payers with the duty to declare and pay business tax under Article 35 thereof. Article 47 of the Enforcement Rules of the Business Tax Act, which requires that, in the case of an auction sale of confiscated, forfeited or mortgaged goods held

**解釋文：**營業稅法第二條第一款、第二款規定，銷售貨物或勞務之營業人、進口貨物之收貨人或持有人為營業稅之納稅義務人，依同法第三十五條之規定，負申報繳納之義務。同法施行細則第四十七條關於海關、法院及其他機關拍賣沒收、沒入或抵押之貨物時，由拍定人申報繳納營業稅之規定，暨財政部發布之「法院、海關及其他機關拍賣或變賣貨物課徵營業稅作業要點」第二項有關不動產之拍賣、變賣由拍定或

by the Customs House or a court, the purchaser winning the bid shall declare and pay business tax therefore, and Clause 2 of the Directives for Levying Business Tax on Goods Auctioned or Sold by Courts or Customs or Other Authorities, which requires the purchaser winning the auction sale or the deal to pay business tax for the real property put up for auction or sale, are against the statute cited above to the extent that they alter the body subject to declaration and payment of the tax, and are contrary to the intent of Articles 19 and 23 of the Constitution in protecting the right of the people. From the date of this interpretation, said Articles shall become void within one year.

**REASONING:** The provision of Article 19 of the Constitution that the people shall have the duty to pay tax in accordance with law means simply that the people shall have the duty to pay tax or the privileges to enjoy the benefits of tax exemption or reduction in pursuance of the prescriptions of law with respect to such matters as taxpaying bodies, tax denominations, tax rates, methods of tax

成交之買受人繳納營業稅之規定，違反上開法律，變更申報繳納之主體，有違憲法第十九條及第二十三條保障人民權利之意旨，應自本解釋公布之日起至遲於屆滿一年時失其效力。

**解釋理由書：**憲法第十九條規定，人民有依法律納稅之義務，係指人民僅依法律所定之納稅主體、稅目、稅率、納稅方法及租稅減免等項目而負繳納義務或享受減免繳納之優惠，舉凡應以法律明定之租稅項目，自不得以命令作不同之規定，否則即屬違反租稅法律主義，業經本院釋字第二一七號及第二一〇號著有解釋。

payment, and tax incentives. Accordingly, no provision in administrative ordinances with respect to tax items may depart from the express prescription of law, or it will be in conflict with the principle of taxation by law. This has been held by this Yuan in our Interpretations Nos. 217 and 210.

Article 23 of the Constitution provides in express words that restraints on the freedoms and rights of the people may be imposed only by prescription of law and shall not go beyond the extent of necessity. As the law can not possibly deal with all details, the legislature may of course authorize administrative agencies to issue ordinances for the purpose of making supplementary provisions thereto. The Constitution also permits the authorization by law with respect to restraints to be imposed on the freedoms and rights of the people if such authorization is clear and specific in its purpose, scope and substance. This is the ratio decidendi based on which we have held in our Interpretation No. 345 that the Regulation Governing the Restriction on the Persons or Represen-

有關人民自由權利之限制應以法律定之且不得逾越必要之程度，憲法第二十三條定有明文。但法律之內容不能鉅細靡遺，立法機關自得授權行政機關發布命令為補充規定。如法律之授權涉及限制人民自由權利者，其授權之目的、範圍及內容符合具體明確之條件時，亦為憲法之所許。本院釋字第三四五號解釋認稅捐稽徵法第二十四條第三項及關稅法第二十五條之一第三項授權訂立之限制欠稅人及欠稅營利事業負責人出境實施辦法與憲法尚無牴觸，釋字第三四六號解釋認國民教育法第十六條第一項第三款及財政收支劃分法第十八條第一項，關於徵收教育捐之授權規定係屬合憲，均係本此意旨。若法律僅概括授權行政機關訂定施行細則者，該管行政機關於符合立法意旨且未逾越母法規定之限度內，自亦得就執行法律有關

tatives of Profit-Making-Enterprise Defaulting on Tax Payments to Apply for Exit Permit, established by authority granted under the Tax Levy Act, Article 24, paragraph 3, and the Customs Act, Article 25-1, Paragraph 3, are not in conflict with the Constitution, and in our Interpretation No. 346 that the provisions in respect of the levying of educational dues as authorized by the Civil Education Act, Article 16, Paragraph 1, Subparagraph 3, and of the Act Governing the Allocation of Government Revenues and Expenditures, Article 18, Paragraph 1, are constitutional. In general, where the law authorizes the establishment by administrative agencies of enforcement rules, the competent agency may certainly set out in such rules details and technical matters in relation to the enforcement of the law to the extent that such rules are consistent with the legislative purposes of the law and are within the limits defined by the enabling statute, provided, however, that the substance of such rules shall neither conflict with the enabling statute nor add any restriction on the freedoms or rights of the people that does not exist in the law. This principle must

之細節性、技術性之事項以施行細則定之，惟其內容不能牴觸母法或對人民之自由權利增加法律所無之限制，行政機關在施行細則之外，為執行法律依職權發布之命令，尤應遵守上述原則。本院釋字第二六八號、第二七四號、第三一三號及第三六〇號解釋分別闡釋甚明。

especially be adhered to by ordinances issued ex officio by administrative agencies to give effect to the law other than the enforcement rules thereof. We have made this principle exceedingly clear in our previous Interpretations Nos. 268, 274, 313 and 360.

The Business Tax Act, as amended and promulgated on November 15, 1985, provides in Article 2, Subparagraphs 1 and 2, that all business operators who sell goods or services and all consignees or holders of imported goods are payers of business tax, with the duty to declare and pay business tax under Article 35 thereof. However, the Enforcement Rules of the Business Tax Act promulgated on January 29, 1986, provide in Article 47: "Goods forfeited and sold through auction sale by the Customs House shall be deemed to have been imported by the purchaser winning the bid and shall be dealt with in accordance with Article 41 of the Business Tax Act. Where the forfeited, confiscated or mortgaged goods sold through auction sale by the court and other agencies were owned by a business operator, the pur-

民國七十四年十一月十五日修正公布之營業稅法第二條第一款、第二款規定，銷售貨物或勞務之營業人、進口貨物之收貨人或持有人為營業稅之納稅義務人，依同法第三十五條之規定，負申報繳納之義務。而七十五年一月二十九日發布之營業稅法施行細則第四十七條則規定：「海關拍賣沒入之貨物，視為由拍定人進口，依本法第四十一條之規定辦理。法院及其他機關拍賣沒收、沒入或抵押之貨物如屬營業人所有者，應於拍定時，由拍定人持同拍賣貨物清單，向拍賣機關所在地主管稽徵機關申報繳納營業稅或取具免稅證明。法院及其他機關點交拍定貨物或換發移轉證明時，應驗憑繳稅證明或免稅證明。」顯係將法律明定之申報繳納主體營業人變更為拍定人（即買受人）；財政部於七十五年四月一日以臺財稅字第七五二二二八四號函發布之「法院、海關及其他

chaser winning the bid shall, at the time of close of the sale, file with the competent taxing authority at the locality of the court or the agency holding such auction sale a declaration of business tax and pay the same or obtain therefrom a certificate of tax exemption, as the case may be, by presenting a list of the goods sold at auction. When delivering the goods sold by auction or issuing an instrument of transfer, the court or agency shall inspect the certificate of tax payment or exemption, as the case may require.” The provision clearly changes the taxpaying body specifically prescribed by law for the purpose of business tax declaration and payment from the business operator to the person winning the bid at the auction sale (i.e., purchaser). Furthermore, Clause 2(1) of the Directives for Levying Business Tax on Goods Auctioned or Sold by Courts or Customs or Other Authorities, announced by the Ministry of Finance directive Tai-Tsai-Shui-Tze No. 7522284 (April 1, 1986), which requires the purchaser winning the auction sale or the deal to pay business tax for the real property put up for auction sale or sale, is inconsistent

機關拍賣或變賣貨物課徵營業稅作業要點」第二項之(一)有關不動產之拍賣、變賣由拍定或成交之買受人繳納營業稅之手續規定，亦與營業稅法之規定不符，雖因營業稅係採加值稅之型態，營業稅額於售價之外另加而由買受人負擔，上開細則及要點之規定，並未增加額外稅負，但究屬課予買受人申報繳納之義務，均已牴觸營業稅法，有違憲法第十九條及第二十三條保障人民權利之意旨，應自本解釋公布之日起至遲於屆滿一年時失其效力。至主管機關如認為法院及其他機關拍賣或變賣不動產與普通營業人銷售之情形不同，為作業上之方便計，其申報繳納營業稅之義務人有另行規定之必要，亦應逕以法律定之，併此指明。

with the Business Tax Act. Although the provisions of the enforcement rules and guidelines cited above do not increase any tax burden because the business tax is a type of value-added tax, the amount of which is added to the selling price and paid by the purchaser, they do impose on the purchaser the duty to declare and pay the tax, and are thus in conflict with the Business Tax Act and against the purpose of Articles 19 and 23 of the Constitution in the protection of the people's right. From the date of this Interpretation, said Articles shall become void within one year. Incidentally, if the competent authority considers it necessary to regulate separately with respect to the person liable for the declaration and payment of the business tax to facilitate its operation on account of the distinct nature of the auction or sale of real property to be held by the court or other agencies from other sales made by ordinary business operators, it must be dealt with by prescription of law.